

**U.S. District Court  
Southern District of Florida (Ft. Pierce)  
CIVIL DOCKET FOR CASE #: 2:12-cv-14065-JEM**

Raffone v. Bhadja et al  
Assigned to: Judge Jose E. Martinez  
Referred to: Magistrate Judge Patrick A. White  
Cause: 42:1983 State Prisoner Civil Rights

Date Filed: 02/17/2012  
Jury Demand: Defendant  
Nature of Suit: 550 Prisoner: Civil Rights  
Jurisdiction: Federal Question

**Plaintiff**

**Salvatore Raffone**  
Prisoner ID: 079281

represented by **Salvatore Raffone**  
079281  
South Florida Reception Center–South  
Unit  
Inmate Mail/Parcels  
13910 NW 41st Street  
Doral, FL 33178  
PRO SE

V.

**Defendant**

**Dr. Haridas Bhadja**  
*Chief Health Officer*

represented by **John Bajger**  
Attorney General Office  
1515 N Flagler Drive  
9th Floor  
West Palm Beach, FL 33401–3432  
Email: [John.Bajger@myfloridalegal.com](mailto:John.Bajger@myfloridalegal.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**ARNP William Bass**  
*Physician's Assistant*

represented by **John Bajger**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**DeDe Vasquez**  
*Dermatologist*

Date Filed	#	Docket Text
02/17/2012	<u>1</u>	A COMPLAINT Under The Civil Rights Act, 42 U.S.C. §1983 against William Bass, Dr. Haridas Bhadja, DeDe Vasquez. Filing fee \$ 350.00. IFP Filed, filed by Salvatore Raffone. (Attachments: # <u>1</u> Summon(s))(cqs) (Entered: 02/21/2012)
02/17/2012	<u>2</u>	Judge Assignment to Judge Jose E. Martinez (cqs) (Entered: 02/21/2012)
02/17/2012	<u>3</u>	Clerks Notice of Magistrate Judge Assignment to Magistrate Judge Patrick A. White. Pursuant to Administrative Order 2003–19 for a ruling on all pre–trial, non–dispositive matters and for a Report and Recommendation on any dispositive matters. (cqs) (Entered: 02/21/2012)
02/17/2012	<u>4</u>	MOTION for Leave to Proceed in forma pauperis with inmate account statement attached by Salvatore Raffone. (cqs) (Entered: 02/21/2012)
02/17/2012	<u>5</u>	MOTION for Appointment of Counsel by Salvatore Raffone. Responses due by 3/5/2012 (cqs) (Entered: 02/21/2012)

02/23/2012	<u>6</u>	ORDER denying <u>5</u> Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 2/23/2012. (cz) (Entered: 02/23/2012)
02/24/2012	<u>7</u>	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 2/23/2012. (tw) (Entered: 02/24/2012)
02/24/2012	<u>8</u>	ORDER PERMITTING PLAINTIFF TO PROCEED WITHOUT PREPAYMENT OF FILING FEE BUT ESTABLISHING DEBT TO CLERK OF \$350.00 and Granting <u>4</u> Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 2/23/2012. (tw) (Entered: 02/24/2012)
02/27/2012	<u>9</u>	NOTICE to the Court Regarding Defendant's Address by Salvatore Raffone (jua) (Entered: 02/27/2012)
04/03/2012	<u>10</u>	NOTICE of Inquiry by Salvatore Raffone (docket sheet sent) (cbr) (Entered: 04/03/2012)
04/09/2012	<u>11</u>	MOTION for Appointment of Special Process Server by Salvatore Raffone. Responses due by 4/26/2012 (cbr) (Entered: 04/09/2012)
04/10/2012	<u>12</u>	ORDER denying <u>11</u> Motion to Appoint Special Process Server, complaint has not yet been screened.. Signed by Magistrate Judge Patrick A. White on 4/10/2012. (cz) (Entered: 04/10/2012)
04/19/2012	<u>13</u>	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re <u>1</u> Complaint filed by Salvatore Raffone. Recommending 1. The case shall proceed against Dr. Bhadja, William Bass and Dr. Vasquez for denial of adequate medical treatment. 2. Service will be ordered by separate order. Objections to RRdue by 5/7/2012. Signed by Magistrate Judge Patrick A. White on 4/19/2012. (tw) (Entered: 04/19/2012)
04/19/2012	<u>14</u>	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AN INDIVIDUAL. The United States Marshal shall serve a copy of the complaint and appropriate summons upon:Haridas Bhadja, M.D., Okeechobee Correctional Inst., 3420 N.E. 168th Street, Okeechobee, FL 34972-4824; William Bass, ARNP, Okeechobee Correctional Inst., 3420 N.E. 168th Street, Okeechobee, FL 34972-4824 and DeeDee Vasquez, PA, 10301 Hagen Ranch Road, C-110, Boynton Beach, FL 33437. Signed by Magistrate Judge Patrick A. White on 4/18/2012. (tw) (Entered: 04/19/2012)
04/20/2012	<u>15</u>	Summons Issued as to William Bass. (br) (Entered: 04/20/2012)
04/20/2012	<u>16</u>	Summons Issued as to Dr. Haridas Bhadja. (br) (Entered: 04/20/2012)
04/20/2012	<u>17</u>	Summons Issued as to DeDe Vasquez. (br) (Entered: 04/20/2012)
05/15/2012	<u>18</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS for <u>13</u> Report and Recommendations. Certificate of Appealability: No Ruling. Signed by Judge Jose E. Martinez on 5/15/2012. (lk) (Entered: 05/15/2012)
05/22/2012	<u>19</u>	MOTION to Compel <i>Defendants to Answer All Documnets Served</i> by Dr. Haridas Bhadja. Responses due by 6/8/2012 (cbr) (Entered: 05/22/2012)
05/22/2012	<u>20</u>	MOTION to Amend <u>1</u> Complaint by Salvatore Raffone. Responses due by 6/8/2012 (cbr) (Entered: 05/22/2012)
05/24/2012	<u>21</u>	ORDER deferring ruling on <u>19</u> Motion to Compel, the defendants shall reply to this motion ; granting <u>20</u> Motion to Amend/Correct to add grievances etc. however, they were not reviewed in the preliminary screening.. Signed by Magistrate Judge Patrick A. White on 5/24/2012. (cz) (Entered: 05/24/2012)
06/26/2012	<u>22</u>	ORDER denying <u>19</u> Motion to Compel, summonses have been issued but not yet served. Signed by Magistrate Judge Patrick A. White on 6/26/2012. (cz) (Entered: 06/26/2012)
09/11/2012	<u>23</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint by Salvatore Raffone. William Bass served on 9/4/2012, answer due 9/25/2012. (ail) (Entered: 09/12/2012)

09/13/2012	<u>24</u>	Summons (Affidavit) Returned Unexecuted by Salvatore Raffone as to DeDe Vasquez. (ail) (Entered: 09/14/2012)
09/17/2012	<u>26</u>	NOTICE of Inquiry by Salvatore Raffone (copy of docket sheet mailed 9/19/2012) (ail) (Entered: 09/19/2012)
09/18/2012	<u>25</u>	ORDER that the plaintiff shall supply the Court with a current address for Vasques, or risk dismissal of this defendant. Signed by Magistrate Judge Patrick A. White on 9/18/2012. (tw) (Entered: 09/18/2012)
09/25/2012	<u>27</u>	MOTION for Extension of Time to File Answer RE: Complaints re <u>1</u> Complaint by William Bass. (Attachments: # <u>1</u> Text of Proposed Order)(Bajger, John) (Entered: 09/25/2012)
09/26/2012	<u>28</u>	OBJECTIONS to <u>13</u> Report and Recommendations by Salvatore Raffone. (ail) (Entered: 09/27/2012)
09/27/2012	<u>29</u>	ORDER Affirming re <u>25</u> ORDER that the plaintiff shall supply the Court with a current address for Vasques, or risk dismissal of this defendant. Signed by Judge Jose E. Martinez on 9/27/2012. (ail) (Entered: 09/28/2012)
09/28/2012	<u>31</u>	NOTICE of filing Letter to the Court by Salvatore Raffone (ail) (Entered: 10/01/2012)
10/01/2012	30	Paperless ORDER granting <u>27</u> Motion for Extension of Time. Defendant may have until October 15, 2012 to file a response to Defendant's motion. Signed by Judge Jose E. Martinez on 9/28/2011. (ajs) (Entered: 10/01/2012)
10/03/2012	<u>32</u>	MOTION for Clerks Entry of Default as to William Bass by Salvatore Raffone. (ail) (Entered: 10/04/2012)
10/04/2012	33	PAPERLESS ORDER by Clerk of Non-Entry of Default re <u>32</u> Motion for Clerks Entry of Default as to William Bass. Reason: Responsive pleading, Motion for Extention of Time to File Answer to Complaint has been filed and Granted by the Court. Signed by DEPUTY CLERK on 10/4/2012. (ail) (Entered: 10/04/2012)
10/08/2012	<u>34</u>	ANSWER and Affirmative Defenses to Complaint with Jury Demand by William Bass, Dr. Haridas Bhadja.(Bajger, John) (Entered: 10/08/2012)
10/11/2012	<u>35</u>	SCHEDULING ORDER: Amended Pleadings due by 2/25/2013. Discovery due by 2/11/2013. Joinder of Parties due by 2/25/2013. Motions due by 3/19/2013. Signed by Magistrate Judge Patrick A. White on 10/10/2012. (tw) (Entered: 10/11/2012)
10/19/2012	<u>36</u>	MOTION for Directions by Salvatore Raffone. (ail) (Entered: 10/22/2012)
10/22/2012	<u>37</u>	MOTION for Appointment of Special Process Server by Salvatore Raffone. Responses due by 11/8/2012 (ail) (Entered: 10/22/2012)
10/29/2012	38	ORDER denying <u>36</u> Motion ; denying <u>37</u> Motion to Appoint Special Process Serve to act as investigator. The plaintiff must provide the Court with the address of his defendants. Signed by Magistrate Judge Patrick A. White on 10/29/2012. (cz) (Entered: 10/29/2012)
11/01/2012	<u>39</u>	MEMORANDUM of Law re <u>37</u> MOTION for Appointment of Special Process Server by Salvatore Raffone. (ail) (Entered: 11/02/2012)
11/01/2012	<u>40</u>	NOTICE of Cronological Order of Events by Salvatore Raffone (ail) (Entered: 11/02/2012)
11/01/2012	<u>41</u>	Plaintiff's NOTICE of First Interrogatories for Defendant by Salvatore Raffone (ail) (Entered: 11/02/2012)
11/19/2012	<u>42</u>	Plaintiff's NOTICE of First Interrogatories for Defendant by Salvatore Raffone (ail) (Entered: 11/20/2012)
11/19/2012	<u>43</u>	MOTION to Compel <i>Discovery</i> by Salvatore Raffone. Responses due by 12/6/2012 (ail) (Entered: 11/20/2012)
11/19/2012	<u>44</u>	MOTION to Compel <i>Discovery</i> by Salvatore Raffone. Responses due by 12/6/2012 (ail) (Entered: 11/20/2012)

11/26/2012	<u>45</u>	ORDER deferring ruling on <u>43</u> Motion to Compel until a response is filed by defendant Bass forthwith; denying <u>44</u> Motion to Compel, the plaintiff includes a petition for a subpoena but provides no evidence that an actual subpoena was issued and sent to the non parties. Signed by Magistrate Judge Patrick A. White on 11/26/2012. (cz) (Entered: 11/26/2012)
11/26/2012	<u>46</u>	RESPONSE to Motion re <u>43</u> MOTION to Compel <i>Discovery</i> filed by William Bass. Replies due by 12/6/2012. (Attachments: # <u>1</u> Exhibit A)(Bajger, John) (Entered: 11/26/2012)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-14065-CIV-MARTINEZ  
MAGISTRATE JUDGE P.A. WHITE

SALVATORE RAFFONE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	<u>REPORT OF</u>
	:	<u>MAGISTRATE JUDGE</u>
HARIDAS BHADJA, et al,	:	
	:	
Defendants.	:	

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I. Introduction

Salvatore Raffone, confined at the South Florida Reception Center, has filed a pro se civil rights complaint. (DE#1) The plaintiff is proceeding in forma pauperis. He alleges denial of adequate medical treatment at Okeechobee Correctional Institution, and the South Florida Reception Center.

This Cause is presently before the Court for initial screening of the complaint (DE#1), pursuant to 28 U.S.C. §1915.

II. Analysis

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

\* \* \*

(e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that -

\* \* \*

(B) the action or appeal -

\* \* \*

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief from a defendant who is immune from such relief.

A complaint is "frivolous under section 1915(e) "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Bilal v. Driver, 251 F.3d 1346, 1349 (11 Cir.), cert. denied, 534 U.S. 1044 (2001). Dismissals on this ground should only be ordered when the legal theories are "indisputably meritless," id., 490 U.S. at 327, or when the claims rely on factual allegations that are "clearly baseless." Denton v. Hernandez, 504 U.S. 25, 31 (1992). Dismissals for failure to state a claim are governed by the same standard as Federal Rule of Civil Procedure 12(b)(6). Mitchell v. Farcass, 112 F.3d 1483, 1490 (11 Cir. 1997)("The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). In order

to state a claim, a plaintiff must show that conduct under color of state law, complained of in the civil rights suit, violated the plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States. Arrington v. Cobb County, 139 F.3d 865, 872 (11 Cir. 1998).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1979) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). The allegations of the complaint are taken as true and are construed in the light most favorable to Plaintiff. Davis v. Monroe County Bd. Of Educ., 120 F.3d 1390, 1393 (11 Cir. 1997).

To determine whether a complaint fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Twombly applies to §1983 prisoner actions. See Douglas v. Yates, 535 F.3d 1316, 1321 (11 Cir. 2008). These include "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Second, the Court must determine whether the complaint states a plausible claim for relief. Id. This is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." The plaintiff is required to plead facts that show more than the "mere possibility of misconduct." The Court must review the factual allegations in the complaint "to determine if they plausibly suggest an entitlement to relief." When faced with

alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff's proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred.<sup>1</sup>

#### Statement of Claims

The plaintiff names Dr. Haridas Bhadja, Chief Health Officer, ARNR William Bass, employed at the Okeechobee CI, and Dermatologist DeeDee<sup>2</sup> Vasquez, employed at the South Florida Reception Center, as defendants. He states he has osteoarthritis and squamous cell carcinoma. The plaintiff alleges that beginning in December of 2006 through November of 2008 he complained of rashes. He filed a grievance on November 12, 2008, and Bhadja refused to provide a referral to the dermatologist for the skin cancer. Finally, after six or more visits to the clinic and two grievances, one was submitted and approved in 2009. The diagnosis of squamous cell carcinoma was confirmed.

He was seen at the Okeechobee Clinic on April 17, 2009 by Dr. DeeDee Vasquez who did five or more biopsies due to the procrastination of Dr. Bhadja and Bass, and he required treatment.

In May of 2009 additional cells were removed. He was continually seen by the dermatologist in July and October of 2009 and 2010. In 2010, despite right cheek excision leakage and puss, he was told by Bhadja and Bass there was nothing wrong. Bhadja ordered antibiotics for 14 days. He was seen by two outside doctors, including a plastic surgeon who performed a biopsy and put

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<sup>1</sup> The application of the Twombly standard was clarified in Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009).

<sup>2</sup> The plaintiff corrected the spelling of Dr. Vasquez's name (DE#9).



him on antibiotics. He was returned to Okeechobee on February 8, 2011, and was informed the antibiotics were no longer having a healing effect. His wound size grew to a crater like opening, and he contends he suffered a life threatening cancer diagnosis. He was taken to Kendall Hospital and a skin graft done and the cancer removed. He was returned to Okeechobee with pain killers. Dr. Bhadja told him he did not need the pills and prescribed "IBP" 3 times a day.

In conclusion, he alleges that Bass denied and delayed treatment of his osteoarthritis and squamous cell carcinoma from October 2006 to June 8, 2011.<sup>3</sup> He alleges that Dr. Bhadja failed to evaluate and treat his condition, and change medications, which caused him pain to the point of being bed ridden. Lastly, he alleges that Dr. Vasquez provided surgery, but failed to perform a biopsy or provide wound care.

#### Denial of Medical treatment

The Eighth Amendment prohibits any punishment which violates civilized standards of decency or "involve[s] the unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 102-03 (1976) (quoting Gregg v. Georgia, 428 U.S. 153, 173(1976)); see also Campbell v. Sikes, 169 F.3d 1353, 1363 (11 Cir. 1999). "However, not 'every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth

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<sup>3</sup> Events occurring before 2008 are time barred by the Statute of limitations which provides a four year time period for 1983 claims.

State Law governs the limitations period in §1983 cases, and "§1983 claims are best characterized as personal injury actions." Wilson v. Garcia, 471 U.S. 261, 280 (1985). "[W]here state law provides multiple statutes of limitations for personal injury actions, courts considering §1983 claims should borrow the general or residual statute for personal injury actions." Owens v. Okure, 488 U.S. 235, 249-50 (1989). Florida law provides multiple statutes of limitations for personal injury actions, and a residual limitations period of four years. Fla. Stat. §95.11(3)(p); Baker v. Gulf & W. Indus., 850 F.2d 1480, 1481-83 (11 Cir. 1988).

Amendment.'" McElligott v. Foley, 182 F.3d 1248, 1254 (11 Cir. 1999) (citation omitted). An Eighth Amendment claim contains both an objective and a subjective component. Taylor v. Adams, 221 F.3d 1254, 1257 (11 Cir. 2000); Adams v. Poag, 61 F.3d 1537, 1543 (11 Cir. 1995). First, a plaintiff must set forth evidence of an objectively serious medical need. Taylor, 221 F.3d at 1258; Adams, 61 F.3d at 1543. Second, a plaintiff must prove that the prison official acted with an attitude of "deliberate indifference" to that serious medical need. Farmer, 511 U.S. at 834; McElligott, 182 F.3d at 1254; Campbell, 169 F.3d at 1363. The objective component requires the plaintiff to demonstrate that he has been subjected to specific deprivations that are so serious that they deny him "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981); see also Hudson v. McMillian, 503 U.S. 1, 8-9 (1992).

A serious medical need is considered "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Hill v. DeKalb Reg'l Youth Det. Ctr., 40 F.3d 1176, 1187 (11 Cir. 1994) (quotation marks and citation omitted). The subjective component requires the plaintiff to demonstrate that the prison officials acted wantonly, with deliberate indifference to the plaintiff's serious needs. See Farmer v. Brennan, 511 U.S. 825, 834 (1994); Wilson v. Seiter, 501 U.S. 294, 298-99 (1991). Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. Id. at 835-36. Consequently, allegations of medical malpractice or negligent diagnosis and treatment fail to state an Eighth Amendment claim of cruel and unusual punishment. See Estelle, 429 U.S. at 106. The inadvertent or negligent failure to provide adequate medical care "cannot be said to constitute 'an

unnecessary and wanton infliction of pain.'" Estelle, 429 U.S. at 105-06; Wilson, 501 U.S. at 298.

Further to rise to a level of an Eighth Amendment violation the plaintiff must demonstrate inhumane conditions of confinement. Farmer v Brennan, 511 U.S., 825 (1994), These conditions must show a deprivation of a normal civilized measure of life's necessities, see Toney v Fuqua, 09 WL 1451645 (11 Cir. 2009) (denial of tooth paste and tooth brush for a period of time did not rise to an Eighth Amendment violation).

Deliberate indifference can be established by evidence that necessary medical treatment has been withheld or delayed for non-medical or unexplained reasons. Farrow v West, 320 F.3d 1235, 1247 (11th Cir.2003) (finding jury question on issue of deliberate indifference because of unexplained fifteen-month delay in treatment). The tolerable length of delay in providing medical attention depends on the nature of the medical need and the reason for the delay. Harris v. Coweta County, 21 F.3d 388, 393-94 (11 Cir. 1994). A plaintiff may also establish deliberate indifference with evidence of treatment "so cursory as to amount to no treatment at all." Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 704 (11 Cir. 1985). If prison officials delay or deny access to medical care or intentionally interfere with treatment once prescribed, they may violate the Eighth Amendment. Estelle, 429 U.S. at 104.

The plaintiff has demonstrated that he suffered from a skin cancer and alleges that the defendants delayed and failed to provide treatment as required. At this early stage, it is recommended that the complaint be allowed to proceed.

III. Recommendation

It is therefore recommended as follows:

1. The case shall proceed against Dr. Bhadja, William Bass and Dr. Vasquez for denial of adequate medical treatment.
2. Service will be ordered by separate order.

Objections to this Report may be filed with the District Judge within fourteen days following receipt.

Dated at Miami, Florida, this 19<sup>th</sup> day of April, 2012.



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UNITED STATES MAGISTRATE JUDGE

cc: Salvatore Raffone, Pro Se  
#079281  
South Florida Reception Center  
Address of record